

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-07-0003

**ORDER AMENDING
RULES 4.2, 7.2, 7.4, 27.7 and 31.6, and Forms 4(a) and 4(b), Ariz. R. Crim. P.**

IT IS ORDERED that 4.2, 7.2, 7.4, 27.7 and 31.6, and Forms 4(a) and 4(b), Ariz. R. Crim. P., be amended in accordance with the attachments hereto,* on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, effective as of July 3, 2007.

IT IS FURTHER ORDERED that this matter shall be open for comment in accordance with Rule 28(C), Rules of the Supreme Court, until August 10, 2007.

IT IS FURTHER ORDERED rescinding Administrative Order 07-0030, effective July 3, 2007.

DATED in the City of Phoenix, Arizona, at the Arizona Courts Building, this ____ day of July, 2007.

For the Court:

RUTH V. MCGREGOR
Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~. Clean copies of the rules and forms are also attached.

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 4. Initial Appearance and Arraignment

Rule 4.2. Initial appearance

a. In General. At the suspect's initial appearance, the magistrate shall:

(1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;

(2) Inform the defendant of the charges;

(3) Inform the defendant of the right to counsel and the right to remain silent;

(4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;

(5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;

(6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing, on the issue of the suspect's release;

(7) Determine the conditions of release in accordance with Rule 7.2, including whether the defendant is non-bailable pursuant to A.R.S. Const. Art. 2, § 22 and A.R.S. § 13-3961; and

(8) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in § 13-3601 the court shall order that the defendant be fingerprinted at a designated time and place if it appears that the defendant was not previously fingerprinted.

b. Misdemeanors: Felonies Charged by Indictment. When a suspect charged with a misdemeanor or indicted for a felony is brought before a magistrate for defendant's initial appearance, defendant may, in addition to the procedures set

forth in Section (a), be arraigned in the manner prescribed by Rule 14, if counsel is present or waived. If the appearance is before a magistrate without jurisdiction to try the offense, the magistrate shall transfer the case to the proper court for arraignment. If the court finds that delay of the arraignment is indispensable to the interests of justice, the court shall provide sufficient time for notice pursuant to Rule 39 (b) (2) when setting a date and time for the continued arraignment.

c. **Felonies Charged by Complaint.** When a suspect is charged in a complaint, the magistrate shall, in addition to the procedures required by Section (a);

(1) Inform the suspect of the right to a preliminary hearing and the procedures by which that right may be waived; and

(2) Unless waived, set the time for a preliminary hearing in accordance with Rule 5.1.

Rule 7. Release

Rule 7.2. Right to release

a. **Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right.** Any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 7.3 (b) which will reasonably assure the person's appearance.

b. **Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right.** A person shall not be released on bail if the court finds the person is not bailable pursuant to A.R.S. Const. Art. 2, § 22 and A.R.S. § 13-3961. If the allegation involves A.R.S. § 13-3961(A)(5), the person shall not be considered bailable if the court finds (1) that the proof is evident or the presumption great that the person committed a serious offense, and (2) probable cause that the person entered or remained in the United States illegally.

c. **After Conviction**

(1) **Superior Court.** After a person has been convicted of any offense for which the person will in all reasonable probability suffer a sentence of imprisonment,

the person shall not be released on bail or on the person's own recognizance unless it is established that there are reasonable grounds to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding. The release of a person pending appeal shall be revoked if the person fails to prosecute the appeal diligently.

(2) Limited Jurisdiction Courts.

(A) Conditions of Release Upon Appeal. After a defendant has been convicted of any offense for which a sentence of incarceration has been imposed, upon filing of a timely notice of appeal, the defendant shall remain, pending appeal, under the same release conditions imposed at or subsequent to the time of the defendant's initial appearance or arraignment, except as provided in this subsection (c) (2). The release of the defendant pending appeal shall be revoked if the defendant fails to prosecute the appeal diligently. A defendant held in custody pending appeal shall be released in the event the defendant's sentence is completed before the appeal has been decided.

(B) Motion to Amend Conditions of Release. Upon the filing of a timely notice of appeal, the state, or the court on its own motion, may move to amend the conditions of release when it appears there is a substantial risk that:

- (i) the defendant presents a danger to any person or the community; or
- (ii) the defendant is unlikely to return to court if subsequently ordered to appear on the particular matter.

(C) Hearing. The court shall set a hearing on such an application within three days of the filing of the motion. Such hearing may be continued for good cause shown. The defendant may be detained pending the hearing. At the hearing, which shall be on the record, the defendant is entitled to representation by counsel. Any testimony of the defendant shall not be admissible in other proceedings except as it may relate to compliance with prior conditions of release, perjury, or impeachment.

(D) Findings. Based on findings stated on the record, the court may amend the conditions of release in accordance with Rule 7.3. In determining the method of release or the amount of bail, the judicial officer shall, on the basis of available information, consider the nature and circumstances of the offense, family or local ties, employment, financial resources, character and mental condition, the

length of residence in the community, the record of arrests, convictions, and appearances at court proceedings.

(E) Superior Court Review. If the trial court enters an order setting a bond or requiring incarceration while the appeal is taken, the defendant may petition the superior court, at any time after such order is entered, to stay the execution of sentence and to allow the defendant to be released without bond or to require a lower bond.

d. Burden of Proof. Issues under Rules 7.2 (a) and (c) shall be determined by the preponderance of the evidence. The prosecutor shall bear the burden of establishing factual issues under Rule 7.2 (a), (b) and (c) (2). The defendant shall bear the burden of establishing factual issues under Rule 7.2 (c) (1).

Rule 7.4. Procedure

a. Initial Decision. At the initial appearance before a magistrate, a determination of the conditions of release shall be made. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

b. Subsequent Review of Conditions. Any party may move for reexamination of the conditions of release whenever the case is transferred to a different court or the motion alleges the existence of material facts not previously presented to the court. The court may, on motion of any party, or on its own initiative, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification. The motion shall comply with the requirements of this rule, Rule 35 and Rule 39. If the motion involves whether the person shall be held without bail, a hearing on the motion shall be held on the record as soon as practicable but not later than seven days after filing of the motion.

c. Evidence. Release determinations under this rule may be based on evidence not admissible under the rules of evidence.

d. Review of Bond. The court before which a misdemeanor is pending shall, no more than 10 days after arraignment, review the case file concerning the conditions of release of any defendant held in custody on bond for the purpose of determining the propriety of amending the conditions of release.

Rule 27.7. Initial appearance after arrest

When a probationer is arrested on a warrant issued under Rule 27.5 (b), his or her probation officer, if any, shall be notified immediately, and the probationer shall be taken without unreasonable delay before the court from which the warrant was issued, who shall advise the probationer of his or her rights to counsel under Rule 6, inform the probationer that any statement he or she makes prior to the hearing may be used against him or her, set the date of the revocation hearing, and make a release determination under Rule 7.2 (c).

Rule 31.6. Stay of execution of sentence and credit pending appeal

A sentence of imprisonment shall be stayed pending appeal when the defendant is released in accordance with Rule 7.2 (c). A defendant who remains in custody during the pendency of an appeal shall receive the same benefits as if no appeal has been taken.

A sentence to pay a fine shall be stayed pending appeal.

Defendant's NAME _____ DOB _____ BOOKING NO. _____ CASE NO. _____

2. List any prior:

Arrests: _____

Convictions: _____

Failures to Appear (FTA): _____

Protective Orders: _____

3. There is an indication of:

☐ Alcohol Abuse ☐ Other Substance Abuse
☐ Mental Health Issues ☐ Physical Illness

☐ Developmental Disability
Explain: _____

4. Defendant is employed by: _____
Address: _____

Phone: _____
How long: _____

5. Defendant resides at: _____

With Whom: _____

How Long: _____

Alternate address for court notification: _____

6. Facts to indicate defendant will flee if released: _____

7. Reasons to oppose an unsecured release: _____

D. CIRCUMSTANCES OF THE OFFENSE

1. ☐ Defendant used firearm or other weapon
Type: _____

2. ☐ Defendant injured someone.
Explain: _____

3. ☐ Medical attention was necessary
Nature of injuries: _____

4. ☐ Defendant threatened someone
Nature of threats: _____

5. If property offense
a. Value of property taken/damaged: _____
b. ☐ Property was recovered

6. Names of co-defendant(s), if any: _____

E. CRIME(S) AGAINST PERSONS

1. Relationship of defendant to victim: _____

2. ☐ Victim(s) and defendant reside together.

3. Law enforcement learned of the situation by ☐ Victim
☐ Third Party ☐ Officer observation

4. ☐ Previous incidents involving these same parties
Explain: _____

5. Defendant is currently the subject of:
☐ Order of Protection
☐ Injunction against Harassment
☐ Other court order: _____

6. ☐ Likelihood of inappropriate contact with victim(s)
Explain: _____

7. ☐ Victim(s) expressed an opinion on defendant's release.
Explain: _____

Defendant's NAME _____ DOB _____ BOOKING NO. _____ CASE NO. _____

F. DOMESTIC VIOLENCE DEFENDANT ISSUES

- ☐ Access to or use of weapons
- ☐ Children/Vulnerable adults present
- ☐ Crime occurred in public
- ☐ Control/ownership/jealousy issues
- ☐ Depression
- ☐ Frequency/intensity of Domestic Violence increasing
- ☐ Kidnapping
- ☐ Potential for multiple violations of court orders
- ☐ Prior history of Domestic Violence
- ☐ Prior Protective Order
- ☐ Recent separations
- ☐ Stalking behavior
- ☐ Threats of homicide/suicide/bodily harm
- ☐ Violence against children, vulnerable adults or animals

Explain: _____

G. CIRCUMSTANCES OF ARREST

1. Did defendant attempt to:
☐ Avoid arrest ☐ Resist arrest ☐ Self Surrender
Explain: _____

2. ☐ Defendant was armed when arrested
Type of weapon: _____

3. ☐ Evidence of the offense was found in defendant's possession
Explain: _____

4. State whether defendant was under the influence of alcohol or drugs at the time of the offense
☐ Yes ☐ No ☐ Unknown
Type of substance: _____

H. DRUG OFFENSES

1. If the defendant is considered to be a drug dealer, state the supporting facts: _____

2. State quantities and types of illegal drugs directly involved with offense _____

- ☐ Methamphetamine was involved:
☐ Drug field test was positive:
☐ Defendant admission of drug type: _____
☐ Approximate monetary value of drugs: _____
3. State evidence of illegal drug use: _____

4. State whether money was seized
☐ Yes ☐ No
Amount: _____

If this is a fugitive arrest, complete the affidavit as required by the Uniform Criminal Extradition Act (ARS § 13-3841 et seq.)

I certify that the information presented is true to the best of my knowledge:

Date

Arresting Officer/Agency/ Serial No.
Duty Phone No. _____

COURT

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

Booking No. _____

**RELEASE
QUESTIONNAIRE**
(To be completed by
Defendant)

Alias(es) _____

The following information is for the purpose of determining the conditions under which you may be released at this time. You are not required to answer any question if you feel the answer might be harmful to you. The answers you give to the following questions will be used by the court for the purpose of determining the conditions of your release. However, your answers will be checked against the information supplied by the police, and with the references you yourself give on the form. Any discrepancies may result in higher bail or harsher conditions of release. **Any information you give may be used against you in this or any other matter.**

General Background**1. Background and Residence**

Full Name: _____

Sex _____ Race _____ Date of Birth _____

Place of Birth [city, state, country] _____

Present Citizenship _____

If you are not a United States of America citizen, how long have you been in this country? _____

Present Address _____

How long have you lived at the above address? _____

Telephone No. () _____ Cell No. () _____

Where else have you lived in the past year and for how long?

Where will you go if released today? _____

2. Family

Are you married/partnered? [] Yes [] No If so, are you living with your spouse/partner? [] Yes [] No

Are you living with someone? Relationship: _____

How many other persons (including your children) are living with you? _____

How much do you contribute to their support? _____

Do you have regular contact with any other relatives? [] Yes [] No

Explain _____

3. **Employment**

Are you presently employed? [] Yes [] No If not, what is your principal means of support?

Explain: _____

Employer's Name _____

Address: _____

Telephone No. () _____

What is the nature of your job? _____

How long have you worked there? _____

4. **Criminal Record**

Do you have any previous criminal record? [] Yes [] No

Explain _____

5. **Record of Appearance**

Have you ever been released on bail or other conditions pending trial? [] Yes [] No

Did you ever fail to appear as required? [] Yes [] No

Explain _____

6. **Supervision**

Is there any organization or any person who might agree to supervise you and be responsible for your return to court as required? [] Yes [] No

Organization or person to contact _____

_____ () _____
Address City State Zip Telephone

7. Other Circumstances

Are there any other matters (such as your health or illness in your family) which you feel the court should consider in making its decision? _____

8. Verification

Is there any other friend, relative, neighbor or other person who can be called as a reference to this information?

Name Address City State Zip Telephone

Name Address City State Zip Telephone

Name Address City State Zip Telephone

I certify, under penalty of perjury, that the information presented is true and correct to the best of my knowledge.

Date

Defendant Signature
Contact Telephone No. _____